## REMARKS

Claims 1-29 remain pending in the present application. The claims are listed above for convenient reference, but have not been amended.

Summary of Telephone Interview

After faxing an Applicant Initiated Interview Request Form with agenda items and draft arguments, a telephone interview was held on February 2, 2004. Applicants' attorney requested clarification of the rejections described in the "Claim Rejections" portion of the Final Office Action relative to the portion of the Final Office Action entitled "Response to Arguments." The Examiner's response to applicants' arguments indicates that the Examiner takes official notice of an element of applicants' claims. However, the Claim Rejections portion of the Final Office Action does not indicate that official notice is applied by the Examiner in rejecting the claims, but instead, only cites previously cited prior art references. Thus, applicants' attorney requested confirmation that official notice is a substantive basis for the continued rejection of applicants' claims, and not simply an optional secondary basis provided beyond the references and reasoning provided in the body of the Final Office Action. The Examiner confirmed that official notice is a substantive basis for the rejection and should be considered to be incorporated into the Claim Rejections portion of the Final Office Action.

Applicants attorney then indicated that there might be a misunderstanding in regard to some of the terms used in applicants' claims. For example, applicants' attorney explained that it appears the Examiner might have misunderstood the claim step recited as "automatically embedding the slide display commands." As explained in detail below, the above step is defined by language in the independent claims and further explained in the specification. Applicants' attorney pointed out the defining language in the independent claim and explained the corresponding meaning. The Examiner indicated that the intended meaning was now understood, and that the Examiner would confer with a supervising Examiner. The Examiner also indicated that one or more Examiner amendments might be proposed to applicants' attorney in a later telephone call after receiving this formal request for reconsideration. However, no agreement regarding the patentability of any claim was reached during the telephone interview.

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<u>Claims Rejected under 35 U.S.C. § 103(a) over Dyson in View of Craig</u>

Claims 1-5, 7-13, 16-18, 21, 22, and 24-27 continue to be rejected under 35 U.S.C. § 103(a) as being unpatentable over Dyson ("Mastering Microsoft Internet Information Server 4," Sybex, 1997), in view of Craig (U.S. Patent No. 6,108,687). In the interest of reducing the complexity of the issues for the Examiner to consider in this response, the following discussion focuses on amended independent Claims 1, 9, 16, 20, and 24, and the patentability of each remaining dependent claim is not necessarily separately addressed in detail. However, applicants' decision not to discuss the differences between the cited art and each dependent claim should not be considered as an admission that applicants concur with the Examiner's conclusion that these dependent claims are not patentable over the cited references. Similarly, applicants' decision not to discuss differences between the prior art and every claim step or element, or every comment made by the Examiner should not be considered as an admission that applicants concur with the Examiner's interpretation and assertions. Indeed, applicants believe that all of the claims in the present application patentably distinguish over the references cited. A specific traverse of the rejection of each dependent claim is not required, since dependent claims are patentable for at least the same reasons as the independent claims from which the dependent claims ultimately depend.

The Examiner has taken official notice "that 'automatically embedding slide display commands into a data stream as the data is produced' in a computer networking environment was well known in the art at the time the invention was made" (Final Office Action, pg. 16, lines 9-11). Applicants respectfully traverse the official notice for the reasons discussed below. According to the MPEP, "notice of facts beyond the record which may be taken by the examiner must be 'capable of such instant and unquestionable demonstration as to defy dispute'" (MPEP § 2144.03 A., citing In re Ahlert, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), citing In re Knapp Monarch Co., 296 F.2d 230, 132 USPQ 6 (CCPA 1961)). "[A]ssertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some **reference work** recognized as standard in the pertinent art" (emphasis added, MPEP § 2144.03 A., citing In re Ahlert, 424 F.2d at 1091, 165 USPQ at 420-421).

Applicants believe that the Examiner misunderstands the meaning of the claim step for which the Examiner takes official notice. In particular, the Examiner seems to focus on an "automatic" versus "manual" interpretation of the step. However, the Examiner should instead focus on the

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1    distinction between the predefined content portion and the live portion of the presentation in these

2    claims to understand that the term "automatically" is intended to express its meaning as a dynamic

3    action referring to inserting slide display commands into a data stream while the data stream is

4    produced. Specifically, slide display commands are defined in applicants' claims and specification as

5    corresponding to slide trigger events that cause the display of presentation slides that are included in

6    a **predefined content portion** of a live presentation. This predefined content portion of the live

7    presentation is distinguished in the claims and in the specification from a **live portion** with live audio

8    and/or visual content. Thus, the proper interpretation of applicants' claim language, as it is precisely

9    written, is that slide display commands **corresponding to** predefined presentation slides are

10   embedded in a data steam as the data stream is produced, but the predefined presentation slides are

11   not included in the data stream. The data stream is separate from the predefined presentation slides.

12   Further, applicants' claims and specification define the data stream as comprising data corresponding

13   to the live portion of the presentation, which comprises live audio and/or visual content. Thus,

14   applicants' claim element requires that the slide display commands, which control the predefined

15   portion, must be automatically embedded into the data stream as the data stream corresponding to the

16   live audio and/or visual content is produced. This unique combination that synchronizes the

17   predefined content portion (i.e., display of slides) into the data stream of the live portion while the

18   live portion is being created is certainly not capable of such instant and unquestionable demonstration

19   as being so well known in the art without recourse to a published prior art reference as to defy

20   dispute.

21          Applicants also contend that the claim step for which the Examiner relies upon official notice

22   is specific to a complex area of continuous data streaming in network communications, and the

23   Examiner's reliance on official notice in rejecting the claim in which this step or element appears

24   should only be justified if the Examiner can demonstrate that a recognized reference work supports

25   his position that the claim element is as well known in the art as the Examiner asserts. As explained

26   in applicants' specification, and as should be evident from the cited prior art, in the past, slide

27   triggering was either (1) included in a data stream together with the predefined content such as slides,

28   or (2) was manually inserted into a data stream with an editing tool to reference separate predefined

29   content (see applicants' specification, pg. 5, lines 13-27). In the first case noted above, the

30   predefined content is not separate from the data stream, so the slide triggers of the prior art cannot be

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equated to applicants' slide display commands that correspond to a separate predefined content. Specifically, Dyson explains that "In a nutshell, you use the ASF Editor to synchronize images, audio, and scripts and to **combine all these elements into a single .asf file** that you can then stream to your users with NetShow On-Demand Server" (emphasis added, Dyson, Chapter 8, Using the ASF Editor, pg. 1 of 7, 1st paragraph). In the second case, the slide triggers of the prior art specified Web page URLs or specific file names, and there was no means to insert these specific identifiers into the data stream while the data stream was being generated. Instead, at the time of applicants' invention, a user had to manually insert script commands into a preexisting data stream with a data stream editor (e.g., the ASF Editor). Even if the Examiner does not consider these detailed relationships to be important, the correct understanding of applicants' term "slide display command" (as a command that refers to separate presentation slides, yet is automatically embedded into a data stream at the time a data stream is produced) must be considered in determining whether applicants' claims are patentable. The Examiner's assertion that such a command and its relationship to the data stream is so well known that a prior art reference teaching this aspect of the claims need not be cited is not capable of any instant and unquestionable demonstration through a recognized reference work so as to defy dispute.

Automatically embedding slide display commands while producing the data stream is clearly desirable, but the cited references do not disclose or suggest performing this step, or suggest any way for one of ordinary skill in the art at the time of the invention to modify an editor or other system to automatically embed URLs or other slide display commands into a data stream of live audio and/or video data while the live audio and/or video data are being created as a data stream. Thus, this unique step or element could only have been gleaned from applicants' specification and is not capable of such instant and unquestionable demonstration of being well known to those of ordinary skill, as to defy dispute. When interpreting claim terms, it is clear that *prima facie* obviousness is not established unless it is shown that it would be obvious to combine the prior art so as to achieve applicants' invention as defined by the terms used in applicants' claims.

As a consequence of misunderstanding the term "slide display command," the Examiner apparently attempted to establish the state of the art at the time of the invention by taking official notice of a crucial claim step or element that cannot be found in the prior art. The MPEP warns that "[t]he facts constituting the state of the art are normally subject to the possibility of rational

disagreement among reasonable [people] and are not amenable to the taking of such notice" (MPEP § 2144.03 A., citing In re Eynde, 480 F.2d 1364, 1370, 1787 USPQ 470, 474 (CCPA 1973)).

Accordingly, taking official notice of applicants' claim step or element is not warranted in this case, and the rejection under 35 U.S.C. § 103(a) of each of the independent Claims 1, 9, 16, 20, and 24, which include this step or element, should be withdrawn. Because a dependent claim includes all of the elements of the independent claim and any intervening claims from which the dependent claim depends, the dependent claims of this application are patentable for at least the same reasons as the independent claims. Thus, the rejection under 35 U.S.C. § 103(a) of dependent Claims 10-13, 17, 18, 21, 22, and 25-27 should also be withdrawn. At the very least, pursuant to M.P.E.P. § 2144.03, applicants respectfully traverse the assertion that the claimed subject matter is "well known" in the art. As required in M.P.E.P. § 2144.03, if the applicants traverse such an assertion, the Examiner should cite a reference in support of his or her position (M.P.E.P. § 2144.03 (August 2001)). If the Examiner cites an additional reference, the current finality of the rejection of all the claims should be withdrawn, and a new office action issued that cites any prior art references justifying the rejection of applicants' claims, so that applicants can respond by either amending the claims or pointing out the deficiencies of the rejections.

Claims Rejected under 35 U.S.C. § 103(a) over Dyson in View of Klemets

Claims 6, 14, 15, 19, 23, 27, and 28 continue to be rejected under 35 U.S.C. 103(a) as unpatentable over Dyson in view of Klemets et al. (U.S. Patent Application No. 2001/0013068, hereinafter referred to as Klemets). However, as discussed above, Dyson and/or official notice do not disclose or suggest all of the steps or elements of the independent claims from which dependent Claims 6, 14, 15, 19, 23, 27, and 28 depend. Further, the Final Office Action does not indicate that Klemets discloses or suggests the missing step or element discussed above. Thus, dependent Claims 6, 14, 15, 19, 23, 27, and 28 are patentable for at least the same reasons as the independent claims.
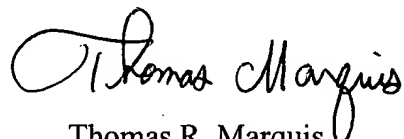
Also, in response to the applicants' arguments traversing the rejections set forth in applicants' previous amendment of September 15, 2003, the Examiner indicates that paragraphs [0065-0068] of Klemets disclose the elements of a keyframe and indexing each slide display command to a nearest preceding keyframe time index. However, this portion of Klemets was cited in the last Office Action, and applicants directed the Examiner's attention to paragraph [0053] that explains the content of a

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locator annotation stream, which is separate from a video stream. Thus, paragraph [0053] defines some of the terminology used in paragraphs [0065-0068]. Specifically, paragraph [0053] explains that "[e]ach annotation frame includes an event locator and an event time marker . . ." (Klemets, [0053]). However, the annotation frames of the **annotation** stream in Klemets are not equivalent to applicants' keyframes or indices of applicants data stream of live audio and/or visual data, as defined by applicants' claims and specification. Moreover, paragraphs [0065-0068] and the remainder of Klemets do not disclose or suggest any kind of keyframe as defined by applicants' specification. As explained in applicants' previous amendment, "[k]eyframes are video frames that comprise new data, while deltaframes comprise data corresponding to the difference between a current frame and its immediately preceding frame. Preferably, each slide display command will be indexed to a nearest preceding keyframe . . ." (see applicants' specification, page 7, lines 3-6). In contrast, Klemets does not distinguish any different types of video frames. Klemets simply provides a time stamp for each video frame (see Klemets' Figure 5). Consequently, Klemets can not possibly disclose or suggest indexing a slide display command to a nearest preceding keyframe time index value. Accordingly, the rejection of Claims 6, 14, 15, 19, 23, 27, and 28 under 35 U.S.C. § 103(a) should be withdrawn.

In consideration of the preceding Remarks, it should be evident that all claims in the present application define a novel and non-obvious invention. Since the application is in condition for allowance, the Examiner is asked to pass it to issue without further delay. Should any questions remain, the Examiner is asked to telephone applicants' attorney at the number listed below.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the U.S. Postal Service in a sealed envelope as first class mail with postage thereon fully prepaid addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on February 9, 2004.

Date: February 9, 2004

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